IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 1ST AUGUST 2007 / 10TH SRAVANA 1929

WP(C).No. 18952 of 2007(F)

CC.210/2007 of J.M.F.C., KAYAMKULAM
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PETITIONER:
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1. VASAVAN, S/O. KRISHNAN,
THATTARAZHI PUTHEN VEEDU, ERUVAKKIZHAKKU MURI,
PTHIYOOR VILLAGE.

2. SANTHOSH, S/O. VASAVAN,
THATTARAZHI PUTHEN VEEDU, ERUVAKKIZHAKKU MURI,
PTHIYOOR VILLAGE.

BY ADV. SRI.S.SANAL KUMAR
SMT.BHAVANA VELAYUDHAN

RESPONDENTS:
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1. STATE OF KERALA, REPRESENTED BY
THE SECRETARY TO HOME DEPARTMENT,
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM.

2. THE CIRCLE INSPECTOR OF POLICE,
KAYAMKULAM.

BY GOVERNMENT PLEADER SRI.GIKKU JACOB

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 01/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

R.BASANT, J

W.P(C).No.18952 of 2007

Dated this the 1st day of August, 2007

JUDGMENT

The petitioners are accused No.1(2nd petitioner) and father of accused 2 and 3 (1st petitioner) in C.C.No.210/07 pending before the learned Judicial Magistrate of the First Class, Kayamkulam. Cognizance has been taken in that case on the basis of a final report submitted by the police in Crime No.200/07. The accused persons face allegations for offences punishable, inter alia, under Section 326 I.P.C.

2. The short prayer of the petitioners/accused (the 1st petitioner makes the prayer on behalf of his sons, accused 2 and 3) is that the powers under Article 226 of the Constitution of India may be invoked to direct the police to conduct a further investigation.

3. What is the reason ? The learned counsel for the petitioners submits that the police have not conducted any proper investigation. The police have an axe to grind against the accused persons. Because of such reason, prompted by mala fides, a proper investigation was not conducted and hurriedly a final report has been filed against the accused persons. This is the plea.

4. Investigation was conducted by the Circle Inspector of

Police, Kayamkulam. In the F.I.R, it is alleged that the defacto complainant who was travelling in his two wheeler was chased by 3 persons in a two wheeler which over took him, stopped him and attacked him with dangerous weapons. He suffered injuries including a fracture. The accused persons are named in the F.I.R. Investigation has been conducted. In the course of investigation, two witnesses, who had actually witnessed the occurrence – passers-by as also two persons who are neighbours who had rushed to the scene of occurrence on hearing the commotion, have been examined by the police and their statements are relied on in support of the case of the prosecution.

5. The learned counsel for the petitioners submits that further investigation is liable to be directed for 3 specific reasons. First of all it is contended that there is a strain in the relationship between the petitioners/accused and the Kayamkulam police. He relies on certain earlier instances, where further investigation was directed to be conducted by superior officers and it was revealed that the police had not conducted a proper investigation into cases in which the accused/petitioners had a real stake. Secondly it is contended that the case diary reveals that a proper investigation has not been conducted as is evident from certain incongruities/inadequacies in the

description of the names and details of the accused and witnesses. Thirdly and finally it is contended that the Investigating Officer has relied heavily on the statements given by two alleged eye witnesses who happened to be the chance witnesses. These are the 3 grounds on which the claim for the relief is founded.

6. I have very anxiously considered the submissions made by the learned counsel for the petitioners and the learned Public Prosecutor. I have perused the case diary thoroughly. I find absolutely no merit in the prayer for issue of a direction for further investigation.

7. The first ground that there were some previous differences of opinion between the petitioners and officials of the Kayamkulam police station is found to be of no substance as there is no specific allegation raised against the present Investigating Officer, a C.I who had conducted investigation into the present crime. The mere fact that earlier, some subordinate officials of the Kayamkulam Police were involved in improper action against the petitioners is by itself no reason to discard the investigation conducted by a superior police official -a C.I who conducted the present investigation.

8. The second contention that no proper details have been given has been given due consideration by me. Age of some of the accused and witnesses are not shown correctly. Their employment is

not correctly shown. One of them is a law student and is shown as a coolie. Such inadequacies/inaccuracies though unsatisfactory, are not, according to me, sufficient to justify invocation of the constitutional jurisdiction under Article 226 of the Constitution or the inherent jurisdiction under Section 482 Cr.P.C.

9. The third and final contention that the witnesses to the occurrence cited are chance witnesses, does not also appeal to me, at all. The incident took place on a public road. Users of the road are natural witnesses in such a situation. I have gone through the statement of the witnesses concerned. I find no much substance in the contention that the Investigating Officer should have refused to accept and act upon their statements for the reason that they are not having their places of residence or employment at or immediately adjacent to the scene of the crime. In fact, the statement of one of the witnesses shows that he stays close to the scene of the occurrence also.

10. It is further seen that two persons who have their house nearby had rushed to the scene on hearing the cries and commotion. They are a father and daughter and they occupy a house near the scene of the crime. Their statements show that on hearing the cries, the daughter mistakenly assumed that the cries were that of her son

and she along with her father rushed to the scene of the crime and saw the latter portion of the incident. That circumstance - that the eye witnesses are chance witnesses also, according to me is not sufficient at all to direct further investigation in a case like the instant one.

11. On broad probabilities, the investigation cannot be held to be misdirected or improper. The victim has suffered a fairly grievous injury. His statement has been recorded fairly promptly. A detailed narration about the incident is available in the F.I.R. In these circumstances, I find absolutely nothing to come to a conclusion that the Investigating Officer had misdirected himself or had gone astray in the conduct of the investigation.

12. I do not in these circumstances find any reason to invoke the inherent jurisdiction under Section 482 Cr.P.C or the constitutional jurisdiction under Article 226. This Writ Petition deserves to be dismissed and I do so.

13. Lest any unintended message be conveyed, I make it clear that I have not intended to express any final opinion on the acceptability of the materials collected or about details of the course adopted by the Investigating Officer in conducting the investigation. I have only chosen to take the view that the extraordinary constitutional/inherent powers need not be invoked to interfere with

the investigation and to direct conduct of any further investigation. All pleas which would otherwise be available to the petitioners/accused shall, needless to say, be available to them in the trial. The dismissal of this Writ Petition shall not affect such rights at all.

(R.BASANT, JUDGE)

rtr/-